LE COPY

No. 341

Office-Supreme Court, U.S.
FILED
AUG 30 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

FLOYD A. WALLIS,
Petitioner,

versus

PAN AMERICAN PETROLEUM CORPORATION,
Respondent.

FLOYD A. WALLIS,
Petitioner,

versus

PATRICK A. McKENNA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR PAN AMERICAN PETROLEUM CORPORATION IN OPPOSITION

LLOYD J. COBB
MORRIS WRIGHT
METTERY I. SHERRY, JR.
902 Whitney Building
New Orleans, Louisiana

WILLIAM P. HARDEMAN
PERCY SANDEL
1016 St. Charles Avenue
New Orleans, Louisiana

Attorneys for Respondent,
Pan American Petroleum
Corporation

INDEX

TABLE OF CASES

TABLE OF CASES (Continued)

TABLE OF CASES (Continued)

STATUTES

TABLE OF CASES (Continued)

Page

MISCELLANEOUS

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1965

No. 341

FLOYD A. WALLIS,
Petitioner,

versus

PAN AMERICAN PETROLEUM CORPORATION,
Respondent.

FLOYD A. WALLIS,
Petitioner,

versus

PATRICK A. McKENNA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

BRIEF FOR PAN AMERICAN PETROLEUM CORPORATION IN OPPOSITION

The Opinion of the United States Court of Appeals for the Fifth Circuit which Petitioner, Floyd A. Wallis, seeks to have reviewed holds that federal law, rather than the law of the State of Louisiana, is applicable herein. *Pan American Petroleum Corporation v. Wallis* reported at 344 F. 2d 432.

The dissenting opinion concedes the right of federal courts to fashion federal common law:

> "I do not say that the Court's decision is likely to start dangerous temblors in American federalism. It has always been in the cards that federal common law would expand as the activities of the national government expanded. For many years, before *Erie*, the federal 'judge followed his own nose'; he 'sat down and looked up what relevant federal law there might be in the cases and otherwise decided what the law ought to be * * * though in some instances the judge might consider relevant state decisions'. Moreover, I agree with Judge Henry Friendly's summary of the development, since *Erie*, of the 'new' federal common law: 'We may not have achieved the best of all possible worlds with respect to the relationship between state and federal law. But the combination of *Erie* with *Clearfield* (Clearfield Trust Co. v. United States, 318 U.S. 363, 63 S.Ct. 573, 87 L.Ed. 838) and *Lincoln Mills* (Textile Workers of America v. Lincoln Mills of Alabama, 353 U.S. 448, 77 S. Ct. 912, 1 L.Ed. 2d 972) has brought us to a far, far better one than we have ever known before.' " (344 F. 2d 442).

Petitioner urges the granting of the petition for a writ of certiorari because the Mineral Leasing Act of 1920, particularly Section 32, "unqualifiedly precludes" (Page 26 of Petitioner's application for review) the application of federal law and "so clearly demonstrates the error of the majority below, that this Court would be justified in granting this petition, and, *immediately reversing the decision below without further proceedings.*" (Emphasis Petitioner's at page 29).

The Opinion of the Fifth Circuit is eminently correct. It succinctly delineates the standards to be followed as announced in repeated decisions of this Court governing the application of federal law in a diversity action. The Opinion stands firm against the challenge by Petitioner which is totally without merit. The rule set forth by the majority creates no imbalance in the scale between federal and state relationships.

STATEMENT OF THE CASE

The suit of Respondent, Pan American Petroleum Corporation, prayed for specific performance of Wallis's obligations under an Option Agreement dated March 3, 1955, which covered five numbered "acquired lands" applications and contained a provision obligating Petitioner "to make diligent efforts to acquire leases on all lands described in the above referred to applications and to obtain the issuance of leases to him covering all of said lands."[1]

Without Respondent's knowledge, Petitioner filed a

---

[1]The acreage affected was approximately 826.87 acres at the Southwest Pass of the Mississippi River near Burwood, Louisiana.

"public domain" application which resulted in the issuance of the federal lease in controversy which is dated December 19, 1958, effective as of January 1, 1959,[2] and the pending "acquired lands" applications covered by the Option Agreement were nullified accordingly.

It is admitted by Petitioner that the same land was embraced by both the "acquired lands" and "public domain" applications. However, in filing the "public domain" application, Petitioner corrected errors of description in the original "acquired lands" offers pointed out to him by his Washington attorney. Such errors came to Petitioner's knowledge during the handling of the "acquired lands" offers admittedly covered by the Option Agreement. Contemporaneously with the surreptitious filing of the "public domain" application for his own benefit, Petitioner filed also, surreptitiously, a new "acquired lands" application in the name of his brother-in-law, T. Miller Gordon, employing therein the new and corrected description. Petitioner has admitted that Respondent had left

---

[2]Shortly after the issuance of the lease to Wallis, he applied for a permit to drill and staked a well location on the lease. He was prevented from operating by action of the State of Louisiana which sought an injunction in the State court. This action was transferred to the United States District Court for the Eastern District of Louisiana. (*State of Louisiana v. Floyd A. Wallis, et al*, E.D. La. Civil Action No. 9046). The California Company and Shell Oil Company, who own leases from the State of Louisiana covering the Wallis lease lands, and Pan American made appearances in the suit. At the suggestion of the court, Wallis, the lessee of the United States, Shell and California, the lessees of the State of Louisiana, and Pan American entered into an operating agreement without prejudice to the respective claims of the parties. The disputed property was developed and is now being operated thereunder by Shell Oil Company, the designated Operator, for the parties ultimately determined to be the owners. The suit of the State of Louisiana was dismissed.

the handling of the "acquired lands" applications to his *discretion* and has admitted also that he never disclosed to Respondent at any time the filing of the "public lands" offer which he now claims he had the right to prosecute and did prosecute solely for his personal profit notwithstanding (a) his obligation in the Option Agreement to make diligent efforts "to obtain the issuance of leases to him covering all of said lands", and (b) his moral, ethical and legal obligation not to act for his own account in conflict with his contractual and fiduciary obligations under the Option Agreement.

The so-called participation of Mr. Neil Stull, Pan American's Washington attorney, referred to on page 10 of Petitioner's application terminated in August, 1955 and neither Stull nor Respondent knew of the filing of the public domain offer on March 8, 1956 until *after* issuance of the lease on December 19, 1958.

On the basis of information that the Department of the Interior might consider the land as "public domain" instead of "acquired", Wallis filed the new application with the improved and corrected description which effectively overcame the errors discovered in the original "acquired lands" offers. Petitioner subsequently prevailed in proceedings in the Department of the Interior and in the Courts as against other applicants seeking the federal lease. *Morgan v. Udall,* 113 U.S. Appl. D.C. 192, 306 F. 2d 799 (1962), cert. den'd 371 U.S. 941.

During the period Petitioner was prosecuting furtively "his" "public lands" offer which he testified was "none of Pan American's business", Petitioner badgered Pan American's representatives for financial assistance to meet what he said were heavy expenses

incidental to obtaining "a lease", but without saying it would be "his" lease.

Petitioner, upon the issuance of the public lands lease BLM 042017, took the position that the Option covered only leases issued in direct response to the acquired lands applications specifically referred to in the Option Agreement and, for that reason, refused to assign BLM 042017 to Respondent.

Respondent on April 13, 1959, filed in the United States District Court, for the Eastern District of Louisiana, this suit for specific performance.

On December 28, 1961, the District Judge decided "nor does it matter whether Wallis obtained his lease by breaching his trust, as alleged" and "In effect, Wallis had two irons in the same fire, in only one of which McKenna and Pan American held an interest," and further, the lease "is the fruit of a different venture based on a new theory".[3]

In the original opinion of the Fifth Circuit, the Court held that "the district court committed fundamental error in applying Louisiana statutes and law to determine rights in a lease on public domain land which were and are subject only to the sovereignty of the United States" and "the doctrine of resulting trusts ... may have application to the facts of this case." This

---

[3]The record in this case demonstrates beyond argument that Petitioner breached his trust and fiduciary obligations to Pan American. The opinion of the Fifth Circuit underscored the holding in *Massie v. Watts;* 6 Cranch 148 (1810), that "According to *the clearest and best established principles of equity*, the agent who so acts becomes a *trustee* for his principal. He cannot hold the land under an entry for himself, otherwise *than a trustee for his principal.*" (Emphasis by Fifth Circuit Court of Appeals).

opinion was confirmed by the majority on rehearing and the judgment of the District Court was vacated and the cause remanded for re-trial upon the evidence already taken and any additional relevant evidence, and for full and complete findings of fact and conclusions of law on all issues under the applicable principles of federal law.

Simply stated, the sole issue posed is whether the Fifth Circuit Court of Appeals is correct in holding that the federal government has an interest herein arising out of federal statutes affecting a federal mineral lease on public domain land requiring the application of federal law.[4]

THE MINERAL LEASING ACT FOR PUBLIC DOMAIN LAND[5]

The majority opinion specifically stated:

> "The law applied should be keyed to the nature of the issue before the court; if nonfederal, state substantive law should be applied; if a federal matter is before the court, federal law should be applied."
>
> " * * * federal issues in such cases will be decided by reference to federal law."

---

[4]The Court below held that "there is sufficient federal interest for the substantive independence of the federal court in determining the claims of McKenna and Pan American".

[5]Act of February 25, 1920; Mineral Leasing Act of 1920; 41 Stat. 437; 30 U.S.C. 181 et seq.

> "The 'Erie doctrine' does not annul the federal courts' responsibility to develop federal common law in aid of the uniform implementation and protection of federal interests."

Petitioner contends that the second opinion of the majority is erroneous in holding that federal law is applicable herein. Petitioner relies on Section 32 of the Mineral Leasing Act[6] and contends that the Court referred to only a portion of Section 32 and did not give the Section full effect. Section 32 reads:

> "The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and do any and all things necessary to carry out and accomplish the purposes of sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes thereof. Nothing in said sections shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States. February 25, 1920, c. 85, § 32, 41 Stat. 450".

The language of Section 32 that "Nothing in said sections shall be construed or held to affect the rights of the States . . . to exercise any rights which they may have" does not preclude the "federal courts' respon-

---

[6] 30 U.S.C. 189.

sibility to develop federal common law in aid of the uniform implementation and protection of federal interests." This provision which Petitioner relies upon did not CREATE any rights in favor of the states. It did not RECOGNIZE any rights of the states. It specifically referred only to such "rights" which the states "*may have*". Further the language of Section 30 of the Mineral Leasing Act[7] "That none of such provisions shall be in conflict with the laws of the State in which the leased property is situated" simply has reference to the *provisions* or *stipulations* of federal leases and does not annul "federal responsibility" which is of concern herein. It is well established that a federal court can fashion federal common law when the rights, interests, duties or substantive policies of the United States are directly affected.[8] *Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943); *Francis v. Southern Pacific Co.*, 333 U.S. 445 (1947); *Royal Indemnity Co. v. United States*, 313 U.S. 389 (1941); *National Metropolitan Bank v. United States*, 323 U.S. 454 (1944); *Sola Electric Co. v. Jefferson Electric Co.*, 317 U.S. 173 (1942); *United States v. Standard Oil Company*, 332 U.S. 301 (1947); *Bank of America National Trust & Savings Ass'n. v. Parnell*, 352 U.S. 29 (1956); *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448

---

[7] 30 U.S.C. 187.

[8] This basic principle was enunciated by the Fifth Circuit Court of Appeals in *Pan American Petroleum Corporation v. Wallis*, 344 F. 2d 432 at page 440 and is indisputable that: "In summary, when jurisdiction of the federal courts is based on diversity of citizenship, all nonfederal matters will be decided by applying the law of the state in which the court is sitting while federal issues in such cases will be decided by reference to federal law. Where federal matters are involved, the specific language of valid federal statutes will control when applicable; where federal statutes do not clearly articulate the law to be applied, federal courts must fill the interstices; federal courts

(1957); *United States v. 93.970 Acres of Land*, 360 U.S. 328 (1959); See also *United States v. Taylor*, 333 F. 2d 633 (1964); *Levitt v. Johnson*, 334 F. 2d 815 (1964); *American Pipe & Steel Co. v. Firestone Tire & Rubber Co.*, 149 F. 2d 872 (1945); 20 Am. Jur. 2d., Courts §208 at 543; 1 A Moore, Federal Practice 0.305 (3) at 3045, 3053 and 0.324, at 3759 (2d ed. 1961); Wright, Federal Courts, §60 at 213 (1963); Federal Courts — Rules of Decision, 50 Va. L. Rev. 1236 (1964); Clark, State Law in the Federal Courts: The Brooding Omnipresence of Erie v. Tompkins, 55 Yale L.J. 267 at 284, 285 (1946); Exceptions to Erie v. Tompkins: The survival of Federal Common Law, 59 Harv. L. Rev. 966 (1946); Hart, The Relations Between State and Federal Law, 54 Colum. L. Rev. 489, 509-15; 525-35 (1954); Mishkin, The Variousness of Federal Law: Competence and Discretion in the choice of National and State Rules for Decision, 105 U. Pa. L. Rev. 797 (1957); Friendly, in Praise of Erie — And of the new Federal Common Law 39 N.Y.U.L. Rev. 383, 422 (1964).

Federal Courts have always had the responsibility to effectuate the uniform implementation and protection of federal interests. It is not to be presumed that Congress ever intended that each of the several states would have, as Petitioner contends, the right to regulate, curtail or prohibit the effectiveness and consequences of the clearly comprehensive Mineral Leasing Act of 1920, as amended. "At the very least, effective Constitutionalism requires recognition of power in the federal courts to declare, as a matter of common law

---

can do this by reference to federal or state law and the choice here depends on a number of different factors. The first question presented in the instant case is whether or not 'federal matters' are involved."

or 'judicial legislation', rules which may be necessary to fill in interstitially or otherwise effectuate the statutory pattern enacted in the large by Congress." Mishkin, The Variousness of Federal Law, supra, at page 800.

Petitioner also denies the "federal courts' responsibility to develop federal common law in aid of the uniform implementation and protection of federal interests as respects the Leasing Act" because the United States did not acquire legislative jurisdiction over this land.[9] However, it is wholly immaterial whether the State has or has not ceded legislative jurisdiction over the lands. The United States has the right, power, affirmative authority and duty to "protect its lands, to control their use and to prescribe in what manner others may acquire rights in them" [*Utah Power & Light Company v. United States*, 243 U.S. 389 (1917)] and this rule is controlling whether or not the federal rights involved arise from the United States' possession of legislative jurisdiction under Article 1, Section 8, Clause 17 of the Constitution. The status of public domain lands in the legislative jurisdiction sense is inconsequential. In no event can local state rules interfere and extend to any matter inconsistent with the plenary power of the United States. *McCullough v. Maryland*, 4 Wheat 316 (1819); *Fort Leavenworth R. R. v. Lowe*, 114 U.S. 525 (1885); *Camfield v. United States*,

---

[9] "The State has not ceded jurisdiction over the lands in question, and when this provision of Section 32 is considered in light of Article 1, Section 8, Clause 17 of the Constitution (Supra, p. 7), and, this Court's decision in *Wilson v. Cook*, 327 U.S. 474 (1945), and *Paul v. United States*, 371 U.S. 245 (1963), the applicability of local law to these private transactions, simply cannot be denied." (Page 26 of Petitioner's application for review)

167 U.S. 518 (1897); *Ohio v. Thomas*, 173 U.S. 276 (1899); *McKelvey v. United States*, 260 U.S. 353 (1922); *Hunt v. United States*, 278 U.S. 96 (1928).

APPLICABILITY OF FEDERAL LAW AS AFFECTING OUTSTANDING FEDERAL LEASES

The assertion of Petitioner that "The question of federal law decided below is of far reaching importance for if it is allowed to stand, it will not only directly affect and render questionable the title of all outstanding federal leases * * * " is untenable. It is not sustained by any reasons. Nor is it buttressed by any authorities. It is quite clear that the title to *all* outstanding federal leases could not conceivably be affected. Uniform federal law would confirm rather than cloud the title of *all* such leases which are "rights" constituting "property". Under federal law the federal government has an interest in federal statutes affecting such "rights" or "property".

The majority opinion that certain provisions of the Mineral Leasing Act of 1920 "leave no room for operation of any State law" is obviously not in conflict with Section 32 of the Act as Petitioner asserts, because as heretofore stated, Section 32 refers only to rights which the state "may have". It is indisputable that this provision of the Mineral Leasing Act was not intended to expand state authority over federal functions.

BOESCHE V. UDALL

Petitioner acknowledges and does not dispute this Court's decision in *Boesche v. Udall*, 373 U.S. 472 (1963)

but asserts that *Boesche* was erroneously interpreted below.[10]

Petitioner continues to rely on *Pan American Petroleum Corporation v. Pierson*, 284 F. 2d 649 (1960), and the early case of *Witbeck v. Hardeman*, 51 F. 2d 450 (1931) and related decisions. However, the decision of this Court in *Boesche* definitely establishes the legal distinction between a patent and a mineral lease, and further contrasts a mineral lease from a mining claim. *Pierson* placed a patent and a mineral lease in the same category and to this extent *Boesche* overruled *Pierson*, and further overruled *Pierson* as to the lack of authority of the Secretary of the Interior to cancel a mineral lease administratively.

The holding in *Pierson* was cited in the original dissenting opinion as dispositive of the litigation. The dissenting judge in his second opinion readily admitted that "The effect of this decision *(Pierson)* is uncertain, however, in view of *Boesche v. Udall* . . ."

In the *Boesche* case, the Court stated:

> "We think that no matter how the interest conveyed is denominated the true line of demarcation is whether as a result of the transaction "all authority or control" over the lands has passed from "the Executive Department", Moore v. Robbins, supra (96 U.S. at 533), or whether the Government continues to possess some measure of control over them."

---

[10]The Court's reference to *Boesche v. Udall* is plain and unambiguous. It appears on pages 440 and 441 (344 F. 2d) of the opinion.

> "Unlike a land patent, which divests the Government of title, Congress under the Mineral Leasing Act of 1920 has not only reserved to the United States the fee interest in the leased land, but has also subjected the lease to exacting restrictions and continuing supervision by the Secretary."
>
> * * *
>
> "In short, a mineral lease does not give the lessee anything approaching the full ownership of a fee patentee, nor does it convey an unencumbered estate in the minerals."

The distinction between a patent and a mineral lease was delineated and affirmed in *Udall v. Tallman* 13 L.ed. 616 (1965), which approved *Boesche*.

It is submitted that *Boesche* is conclusive authority for the rule that the government does have a continuing interest in a federal mineral lease on sovereignty land because in no sense does it divest itself of "all authority or control" therein upon issuance of the lease.

The Fifth Circuit Court of Appeals said:

> "The posture of the instant case is interstitial. The Secretary has granted a lease to Wallis. We deal with claims that are, in essence, an alleged "option" and an alleged "assignment", but which ultimately, must be approved by or registered with the Secretary. We think, therefore, that there is a sufficient federal interest for the substantive independence of the federal

court in determining the claims of McKenna and Pan American."[11]

* * *

"* * * we are impressed by the fact that the Mineral Leasing Act of 1920 represents a comprehensive scheme of federal regulation."[12]

"It is clear that the Mineral Leasing Act recognizes the devices of "assignments" and "options" as concomitants to the public policy against monopoly of federally-owned mineral deposits and, on the other hand, the public policy towards development of our mineral resources and increasing our domestic reserves. We do not think the use of these devices as a part of the scheme of carrying forth this public policy should be limited by interstitial restrictions imposed by the law of the State of Louisiana, which are not present in other states. In a word, we think this is an area for uniformity."[13]

---

[11] *United States v. Standard Oil Company*, 332 U.S. 301 (1947).

[12] The language of this Court in the case of *Sola Electric Company v. Jefferson Electric Company*, 317 U.S. 173 (1942) is uniquely applicable herein: "* * * In such a case our decision is not controlled by *Erie R. Co. v. Tompkins*, 304 U.S. 64, 82 L.ed 1188, 58 S.Ct. 817, 114 ALR 1487. There we follow state laws because it was the law to be applied in the federal courts. But the doctrine of that case is inapplicable to those areas of judicial decisions within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they effect must be deemed governed by federal law having its source in those statutes, rather than by local law."

[13] "In our choice of the applicable federal rule, we have occasionally selected state law . . . But reasons which may make state law at times the appropriate federal rule are singularly inappropriate here . . . The application of state law even without

UNIFORMITY

Hodgson v. Federal Oil and Development Company, 274 U.S. 15 (1927), does not support Petitioner's conclusions, but demonstrates the correctness of the interpretation of that case by the Fifth Circuit, 344 F. 2d 422, footnote 7. In *Hodgson*, the plaintiff attempted to impress a trust upon a federal mineral lease on land in Wyoming. The lease interest of the plaintiff was purchased at a different time from the vestiture of title in plaintiff's cotenants. The Court held: " * * * to support the view that in equity and in good conscience the Oil and Development Co. acted for the McMannus heirs in securing the existing lease, it would be necessary to allege definite facts (not mere conclusions) sufficient to show some fiduciary relationship between them. This has not been done, unless such a relationship necessarily arose because of cotenancy." The Court in *Hodgson*, then stated that the Plaintiff was forbidden as a cotenant from acquiring and asserting adverse title because the interest of the plaintiff accrued at a different time, and thereby plaintiff was bound by the exception to the general rule concerning a breach of trust arising out of a cotenancy derivative from an identical source. The Fifth Circuit herein specifically interpreted *Hodgson* as applying the law of the several states involving a breach of trust, saying, "We read Hodgson as fashioning a federal law of fiduciary relationship by drawing on the law of several states."

---

the conflict of laws rule of the forum, would subject the rights and duties of the United States to exceptional uncertainty. *It would lead to great diversity in results by making identical transactions subject to the vagaries of the laws of several states.*" (Emphasis added) *Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943); See also *Southern Pacific Co. v. Jenson*, 244 U.S. 205 (1917).

Petitioner admits (p. 52) that in *Hodgson* "* * * the Court applied Federal law to the extent possible . . . " The opinion in *Hodgson* also shows that the common law of several states was applied by the Court. As the Court indicated, if the plaintiff had alleged "definite facts (not mere conclusions) to sufficiently show some fiduciary relationship between them", plaintiff would have had adequate ground for relief.

The Mineral Leasing Act is federal in scope. It is a comprehensive pattern intended by Congress to pre-empt the field of federal mineral leases. The federal common law is fashioned basically to effectuate the rights, duties and policies of the United States in a diversity action. Therefore, the extent and legal consequences of the paramount right of the United States to know the real lessee is a substantive national "interest". Otherwise, the government's admitted public policy against "lease grabbing" would be frustrated through devices designed to circumvent this policy. True ownership of a federal lease affecting the public domain necessarily involves national interests. Such ownership is not such a local matter as may be determined by a unique local law at variance with the laws of the several states.

Petitioner has insisted that his procuration of the public domain lease was "none of Pan American's business". The Court will take judicial notice that the lease was issued by the Department of the Interior which is permanently located in Washington, D. C. Respondent's action for specific performance is based, as the United States District Court held, on "a breach of trust, as alleged". All acts of Petitioner during the prosecution of the public domain lease in breach of his

trust are essential ingredients to the issuance of the lease by the Department of the Interior in his name. Petitioner's thrust that these unfaithful acts were "none of Pan American's business" is the final overt demonstration of fraud. At the instant this federal lease was issued to Wallis, the equitable title thereto, under common law precepts, became vested in Pan American by virtue of a constructive trust. It is this equitable title which Petitioner seeks to deny and avoid simply because Petitioner was sued in a federal court in Louisiana which uniquely does not recognize "constructive trusts".

Duplicity by an agent for selfish gain has been denounced universally in Christian jurisprudence since the Scriptures. The purity of the fiduciary relationship is a precept of morality untarnished by the Ages.

> "No man can serve two masters; for either he will hate one, and love the other; or he will attach himself to one and think lightly of the other. You cannot be servants both of God and of money." Matthew 6:24; Luke 16:13.

The facts in *Massie v. Watts*, 6 Cranch 148 (1810), invite comparison with those in the instant suit. Both cases involve a fiduciary who attempted to take advantage for his personal gain of an error in the description of land he was obligated to obtain pursuant to his trust. Massie acted as a "locator." Wallis acted under the Option as an Applicant. Massie encountered difficulties respecting the location. Wallis encountered difficulties respecting the location also, the final description of which he was advised had to be "foolproof" to overcome the prior "vulnerable" descriptions in his

own original "acquired lands" offers and the competitive Morgan offers. Massie, as agent, entered and surveyed a portion of the same land for himself. Wallis correctly described *the same land* for himself and simply filed new offers on the advice of counsel. Massie obtained a patent in his own name. Wallis obtained a mineral lease from the United States in his own name. The filing by Wallis of the "public lands" offer for himself coupled with the "hiding" and "sterilization" of the T. Miller Gordon offer in the name of his brother-in-law, plus the new "foolproof" description, all constitute a "withdrawal" — identical in effect with Massie's withdrawal — of the "acquired lands" offers.

The location of the public domain lands in Louisiana and the domicile of Wallis in Louisiana are purely incidental to the fundamental fact that it is the determination of ownership of a federal lease issued pursuant to federal activities in Washington, D. C. which is involved so that the uniform principles of federal law in this area of federal concern must be applied. It is submitted that the victim of Wallis's acts should not be deprived of the Option to obtain this federal lease simply because Wallis happens to reside in Louisiana.

Interstitial restrictions imposed by Louisiana may not decree who the federal government's lessee shall be and may not under any circumstances prohibit or interdict the transfer of federal leases. The judicial determination of the rights of Petitioner and Respondent with respect to the ownership of the federal lease must be governed exclusively by a uniform rule of law which recognizes the equitable principle of resulting and constructive trusts. The principle is stated in the landmark decision of *Irvine v. Marshall, et al.*, 61 U.S.

(20 How.) 558 (1858), cited by the Fifth Circuit Court of Appeals on pages 434-435 (344 F. 2d) of the opinion, and which approved *Massie*, supra.

The dissenting opinion admits that under the Mineral Leasing Act the federal government is entitled to know the identity of its mineral lessee. Yet, if the dissenting opinion were otherwise followed to its logical conclusion, the federal government would be wholly deprived of this vital right affecting the national interests because UNDER LOUISIANA LAW, AS STATED BY THE DISSENTING OPINION, EVIDENCE COULD NOT BE HEARD TO DETERMINE THE UNDISCLOSED TRUE OWNER OF A FEDERAL LEASE. To recognize the sanctity of undisclosed ownership because of a unique rule in Louisiana would prevent the federal government from enforcing as to public domain land in Louisiana the provisions of the Mineral Leasing Act with respect to control of acreage under the monopoly provisions thereof and would place the government in the position at all times of NOT being able to ascertain the true operator of a federal lease which affects national security.

The original dissenting opinion was predicated on the misconceived conclusion that "there is no distinction between a patentee and a lessee of a mineral lease, as far as passage of title to the mineral is concerned". However, *Boesche*, supra, which demonstrated the distinction between a patentee and a lessee of a mineral lease had already been decided, but was not considered. *Boesche* had overruled *Pierson* on the point that the latter held there was no distinction between the two.

The following language of the second dissenting opinion indicates that it stems from "fear" that the majority holding for uniformity will result in the cataclysmic juridical devastation of long established law which would create chaos with respect to property rights of the laws of several states:

> "The holding of the Court carries alarming implications. If federal common law controls and the claimants hold an equitable title by virtue of a constructive trust, what is Mrs. Wallis's interest? Assuming that Wallis has a part interest as lessee, does his wife have half of his interest as her share in the community? Or is she a common law partner with him? Or does she have no interest in the lease? Are Wallis's children deprived of their legitime, their forced portion of their father's estate, as to their father's interest in the lease? I hope my fears are all bloodless ghosts. But if a federal court, in the name of interstitial law-making, may concoct a Law of Property, Law of Contracts, Law of Restitution and, perhaps, a Law of Descent and Distribution for Mississippi Mud-Lumps, I forsee the fashioning of some fancy legal systems for a great many federal enclaves within the borders of the states." (344 F. 2d 444)

It is difficult to understand the "alarming implications" of the decision of the Court because:

(a) The law of the land as expressed in *Hood v. McGehee*, 237 U.S. 611, 615 (1915) is uncontroverted that each state is sole mistress of the devolution of land by descent, and this principle embraces any real right the

situs of which is in the particular state. The devolution of property is governed universally by local laws of descent and distribution which remain unaffected by the majority decision.

(b) As stated by the author of the dissenting opinion as the organ of the Court in *Akin v. Louisiana National Bank of Baton Rouge*, 322 F. 2d 749 (1963), "There are several reasons why a federal court has no jurisdiction to probate a will or to administer an estate".

The applicability of uniformity to federal leases obviously does not hinge on "alarming implications" and "fears" of "bloodless ghosts". Federal law governs all facets of the Mineral Leasing Act, its effectiveness and consequences, including ownership of a federal lease, while state law remains untouched to regulate descent and distribution.

Summarizing, federal law which is clearly applicable to the facts presented herein is also applicable to all transactions affecting such leases issued pursuant to the Mineral Leasing Act. The nature of the rights and obligations created by federal leases would be affected by a myriad of uncertainties in the absence of a uniform law which provides a certain and definite guide to the rights of the parties, rather than subjecting them to the vagaries of the laws of many states. While the business of the United States may go on without uniformity, the policy of applying federal law to all transactions affecting federal leases is of substantive interest and concern in establishing certainty and definiteness by having one set of rules governing the rights of all parties to federal mineral leases, as contrasted to multiple rules.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

LLOYD J. COBB
MORRIS WRIGHT
METTERY I. SHERRY, JR.
902 Whitney Building
New Orleans, Louisiana

WILLIAM P. HARDEMAN
PERCY SANDEL
1016 St. Charles Avenue
New Orleans, Louisiana

Attorneys for Respondent,
Pan American Petroleum
Corporation

August 27, 1965